

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
SACRAMENTO**

In the Matter of the Licenses and Licensing
Rights of:

ANTONIO MARTIN JONAS, individually,
and d.b.a.
JONAS INSURANCE SERVICES, INC.,
and
ANA MARIA LAVAYEN,
and
MARCO AURELIO LAVAYEN

Respondents.

File No. OC 134-A

File No. OC 163-A

File No. OC 135-A

File No. OC 136-A

ACCUSATION

JURISDICTION AND PARTIES

1. The California Department of Insurance, (hereafter "Department"), brings this matter against Respondents ANTONIO MARTIN JONAS, (hereafter "JONAS"), individually, and d.b.a. JONAS INSURANCE SERVICES, INC., (hereafter "J.I.S."), ANA MARIA LAVAYEN (hereafter "ANA LAVAYEN"), and MARCO AURELIO LAVAYEN (hereafter "MARCO LAVAYEN") before the Insurance Commissioner of the State of California. The Insurance Commissioner is the principal regulator of insurance in California, pursuant to California Insurance Code section 12900 et seq.

2. This proceeding is governed by the California Administrative Procedure Act,

Chapter 5, commencing with Government Code section 11500 et seq.

3. The Department brings the Accusation in this matter against Respondents JONAS, JONAS INSURANCE SERVICES, INC., ANA MARIA LAVAYEN and MARCO AURELIO LAVAYEN pursuant to Sections 1668 and 1738 of the California Insurance Code. Section 1668 sets forth various grounds upon which the Commissioner may deny a Life Agent or a Fire and Casualty Broker-Agent license. Section 1738 of said Code authorizes the Commissioner to suspend or revoke a Life Agent or Fire and Casualty Broker-Agent license upon any of the grounds set forth in Section 1668.

4. JONAS, individually, and d.b.a. JONAS INSURANCE SERVICES, INC., during the relevant periods specified herein, was from January 22, 1977, and now is, the holder of a license issued by the Insurance Commissioner of the State of California to act as a Life Agent.

5. JONAS, individually, and d.b.a. JONAS INSURANCE SERVICES, INC., during the relevant periods specified herein, was from February 12, 1977, and now is, the holder of a license issued by the Insurance Commissioner of the State of California to act as a Fire and Casualty Broker-Agent.

6. On or about February 19, 1998, JONAS filed with the Insurance Commissioner the fictitious business name JONAS INSURANCE SERVICES, INC., under which JONAS intends to conduct and/or currently conducts the business of insurance.

7. ANA MARIA LAVAYEN was, from June 19, 1989 and now is, the holder of a license issued by the Insurance Commissioner of the State of California to act as a Life Agent. In addition, ANA MARIA LAVAYEN was, from January 23, 1991 and now is, the holder of a license issued by the Insurance Commissioner of the State of California to act as a Fire and Casualty Broker-Agent. Said licenses became inactive on June 30, 2003.

8. MARCO AURELIO LAVAYEN was, from July 20, 1999 and now is, the holder of a license issued by the Insurance Commissioner of the State of California to act as a Fire and Casualty Broker-Agent. Said license became inactive on July 31, 2001.

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1 **FACTUAL ALLEGATIONS**

2 **The Melahouris Complaint**

3 9. On or about June 24, 1998, the California Department of Insurance (hereafter “the
4 Department”) received a complaint from Panos and Helen Melahouris, (hereafter
5 “MELAHOURIS’ ”), wherein, in February 1998, JONAS submitted an application to Condor
6 Insurance for homeowner insurance coverage on behalf of the MELAHOURIS’.

7 10. On February 9, 1998, Condor Insurance issued to the MELAHOURIS’ a
8 homeowner insurance policy, Policy No. HPT3006202, with an annual gross premium of five
9 hundred fifty-two dollars (\$552.00). The MELAHOURIS’ did not receive a copy of the policy.
10 Under the MELAHOURIS’ home loan agreement with Fleet Mortgage, Fleet Mortgage would
11 forward a portion of the monthly mortgage payment representing the homeowner insurance
12 premium to JONAS. JONAS was to receive and promptly forward all premium payments to
13 Condor Insurance. In February 1998, Fleet Mortgage notified the MELAHOURIS’ that JONAS
14 instructed Fleet Mortgage to send the insurance premium payment from the MELAHOURIS’
15 impound account to his attention. JONAS stated to Fleet Mortgage that he had placed
16 homeowner insurance coverage on behalf of the MELAHOURIS’ with Condor Insurance.

17 11. On or about February 24, 1998, Fleet Mortgage sent a premium check to JONAS
18 (Check No. 0451375) in the amount of five hundred seventy-two dollars (\$572.00), made payable
19 to JONAS. JONAS received said check and on or about March 5, 1998, JONAS deposited said
20 check into the J.I.S. trust account.

21 12. On February 28, 1998, the MELAHOURIS’ received a Notice of Cancellation
22 from Condor Insurance Services, advising them that coverage would cease on March 10, 1998, if
23 premium payment was not then received.

24 13. On Monday, March 2, 1998, the MELAHOURIS’ called Condor Insurance to
25 inquire about the cancellation notice. Condor Insurance informed the MELAHOURIS’ that Fleet
26 Mortgage had forwarded the premium payments to JONAS. The MELAHOURIS’ communicated
27 with JONAS who promised that he would advance payment to Condor Insurance even before
28 receiving payment from Fleet Mortgage in order to guarantee coverage.

1 14. The MELAHOURIS' verified that JONAS cashed the premium check from Fleet
2 Mortgage on March 9, 1998.

3 15. On June 1, 1998, the MELAHOURIS' again received a Notice of Cancellation
4 letter from Condor Insurance for non-payment of premium, with a total amount due of five
5 hundred fifty-two dollars (\$552.00). HELEN MELAHOURIS called J.I.S. to ask JONAS about
6 the notice. JONAS assured HELEN MELAHOURIS that there was no problem. HELEN
7 MELAHOURIS also asked for a copy of their homeowner insurance policy, since they had not
8 received one for their records. JONAS assured HELEN MELAHOURIS that a copy would be
9 sent to her. The MELAHOURIS' never received a copy of said insurance policy.

10 16. On July 18, 1998, the MELAHOURIS' submitted a claim to Condor Insurance for
11 damages to their home due to a broken water pipe. Condor Insurance informed the
12 MELAHOURIS' that there was no coverage in force. Further, the premium on their policy had
13 never been paid, even though Condor Insurance notified JONAS and J.I.S. of the pending lapse of
14 coverage. The MELAHOURIS' learned that their insurance policy was cancelled on March 10,
15 1998, and that Condor Insurance would not honor their claim.

16 17. On July 24, 1998, HELEN MELAHOURIS called J.I.S. and spoke with ANA
17 LAVAYEN, who stated that if Condor Insurance were to deny the MELAHOURIS' claim, their
18 [J.I.S.] Errors and Omissions (hereafter "E&O) carrier would pay the claim. At the same time,
19 HELEN MELAHOURIS requested that ANA LAVAYEN set up another homeowner policy
20 immediately to cover any future losses to the MELAHOURIS' home. Effective July 24, 1998,
21 the MELAHOURIS' home was covered with a new policy issued by Clarendon National
22 Insurance. HELEN MELAHOURIS asked for a copy of the new policy; the MELAHOURIS'
23 never received a copy of said policy.

24 18. On or about October 7, 1998, J.I.S. received a letter directed to the attention of
25 ANA LAVAYEN, indicating that United States Liability Insurance Company, the E&O carrier
26 for J.I.S., denied liability on the part of J.I.S. and made no voluntary payment with respect to the
27 claim made on behalf of the MELAHOURIS'.

28 19. To summarize, the California Department of Insurance found that JONAS

1 submitted an application to Condor Insurance for a homeowner insurance policy on behalf of the
2 MELAHOURIS' with a proposed effective date of February 9, 1998. JONAS received payment
3 for the premium from Fleet Mortgage and deposited the payment into the J.I.S. trust account on
4 March 5, 1998. The MELAHOURIS' homeowner policy was cancelled on March 10, 1998, due
5 to non-payment of premium. As a result, the MELAHOURIS' suffered over twenty thousand
6 dollars (\$20,000.00) in uninsured loss. JONAS was in receipt of premiums on or about March 1,
7 1998, and was in possession of the MELAHOURIS' premiums at the time of loss on July 16,
8 1998.

9 The Heiser-Duron Complaint

10 20. On or about June 5, 1998, Meredith Heiser-Duron (hereafter "DURON") filed a
11 "Request for Assistance" with the California Department of Insurance regarding JONAS and
12 J.I.S. DURON alleged that on September 9, 1997, during the time her house was refinanced, she
13 sent a check in the amount of seven hundred forty-four dollars (\$744.00) to JONAS to renew her
14 homeowner insurance policy issued by California Fair Plan Association (hereafter "California
15 Fair Plan"). During the month of February 1998, DURON then decided to obtain a new
16 homeowner policy with Condor Insurance Company. She called California Fair Plan and was
17 informed that the \$744.00 premium payment was not applied toward her homeowner policy.
18 After numerous phone calls, DURON then wrote to JONAS on or about March 30, 1998,
19 requesting return of the \$744.00. JONAS returned two hundred fifty dollars (\$250.00), arguing
20 that he placed insurance on behalf of DURON with Condor Insurance. DURON called Condor
21 Insurance, and was told that there was no such policy in force. In her complaint filed with the
22 Department, DURON requested that the remaining four hundred ninety-four dollars (\$494.00) be
23 returned to her as soon as possible.

24 21. Upon investigating DURON'S complaint, the Department found that DURON
25 held a homeowner insurance policy with California Fair Plan, Policy No. 1305290, effective May
26 3, 1997 through May 30, 1998. JONAS placed said policy. JONAS notified DURON that
27 Condor Insurance Company offered better coverage and that JONAS would place coverage with
28 Condor Insurance Company on behalf of DURON.

1 22. JONAS faxed an Accord to First American Title Guaranty Company (hereafter
2 “First American Title”) on September 4, 1997, notifying First American Title that DURON’s
3 homeowner policy was in force with Condor Insurance Company.

4 23. On or about September 19, 1997, JONAS received a premium check in the amount
5 of seven hundred forty-four dollars (\$744.00) from First American Title, depositing the check
6 into J.I.S.’s trust account.

7 24. On or about February 13, 1998, Insurance agent David C. notified California Fair
8 Plan that he placed homeowner coverage with a new carrier, Farmers Insurance Group, Policy
9 No. 91636-93-37, effective February 4, 1998, on behalf of DURON, and requested that California
10 Fair Plan cancel her policy. However, four months previously, on or about September 4, 1997,
11 JONAS was to have placed homeowner coverage, and did represent [to First American Title] that
12 coverage had been placed with Condor Insurance.

13 25. On March 30, 1998, DURON wrote to JONAS, requesting a refund of the \$744.00
14 premium payment paid to JONAS on or about September 19, 1997.

15 26. In a letter from ANA LAVAYEN to DURON dated March 31, 1998, DURON
16 was informed that her homeowner policy was placed with Condor Insurance effective September
17 9, 1998.

18 27. In a letter to the Department dated October 14, 1998, Condor Insurance stated that
19 it had no record of receiving an application for, or ever issuing a homeowner policy to DURON.

20 28. As of December 10, 1998, JONAS and ANA LAVAYEN were unable to provide
21 to the Department any evidence of an application, policy, or payment of premiums made on
22 behalf of DURON. On or about December 8, 1998, JONAS, d.b.a. J.I.S., refunded DURON in
23 the amount of four hundred ninety-four dollars (\$494.00). On or about December 10, 1998,
24 JONAS, d.b.a. J.I.S., refunded DURON in the amount of seventy-six dollars and thirty-two cents
25 (\$76.32), representing interest in the amount of fourteen dollars and fifty-seven cents (\$14.57) on
26 the \$250.00¹ fee paid to DURON on or about April 3, 1998 and the \$494.00 premium returned on
27 December 8, 1998. The refunds were made only after the Department commenced its

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¹ Pre-inspection fee of \$75.00 plus broker fee of \$175.00.

1 investigation and after JONAS and ANA LAVAYEN were unable to produce a homeowner
2 policy from Condor Insurance.

3 29. As a result of JONAS and ANA LAVAYEN's failure to place insurance coverage,
4 DURON was exposed to the risk of loss.

5 The Claudia Rodriguez Complaint

6 30. On or about August 26, 1998, Claudia Rodriguez (hereafter "RODRIGUEZ")
7 filed a "Request for Assistance" with the California Department of Insurance regarding JONAS,
8 J.I.S., ANA LAVAYEN and MARCO LAVAYEN. Rodriguez alleged that on April 27, 1998,
9 she went to JONAS' insurance office to obtain auto insurance. She paid MARCOS LAVAYEN²
10 one hundred forty-eight dollars (\$148.00) by check made payable to Marcos "Lizbeka" as down
11 payment of premium. MARCO LAVAYEN did not inform RODRIGUEZ that she was actually
12 writing a check made payable to ANA and MARCO LAVAYEN'S import-export business.
13 RODRIGUEZ also wrote out a check for \$25.00 to "Lizbeka Enterprise" in the amount of twenty-
14 five dollars (\$25.00) as a broker's fee. MARCO LAVAYEN told RODRIGUEZ that her coverage
15 was placed with Mercury Insurance and was given a temporary insurance identification card. On
16 May 4, 1998, MARCO LAVAYEN called RODRIGUEZ to inform her that he found a better
17 quote. MARCO LAVAYEN told RODRIGUEZ to void her \$148.00 check and to mail him
18 another check for one hundred dollars (\$100.00) payable to J.I.S. On May 6, 1998,
19 RODRIGUEZ went to JONAS' Anaheim office to pick up her voided check and to give MARCO
20 LAVAYEN her check for \$100.00. RODRIGUEZ did not receive did not receive a copy of her
21 insurance policy. She called MARCO LAVAYEN on May 28, 1998 to ask about her policy.
22 MARCO LAVAYEN could not tell RODRIGUEZ the name of her insurance company or
23 whether her policy had been cancelled. MARCO LAVAYEN later told RODRIGUEZ that the
24 insurance company did not receive the paperwork. MARCO LAVAYEN told RODRIGUEZ that
25 he would take care of it. On June 12, 1998, RODRIGUEZ went to J.I.S.'s Anaheim office and
26

27 ² Rodriguez describes Marcos Lavayen as "Mr. Marcos Lizbeka" in her complaint. According to one of Ana
28 Lavayen's many statements to Department investigators, "Lizbeka Enterprises was a business we set up as an import-
export business that we never started." An inspection of the JONAS/J.I.S. business location formerly located at 319
S. Magnolia Avenue in Anaheim, California, shows "Lizbeka Travel" also occupying the same office.

1 wrote another check to J.I.S. in the amount of forty-seven dollars (\$47.00). MARCO LAVAYEN
2 gave RODRIGUEZ another temporary insurance identification card with "General Ins. Co.
3 Trieste" shown as the insurance company. MARCO LAVAYEN initialed RODRIGUEZ's
4 insurance identification card and told her it was now valid. In mid-June 1998, RODRIGUEZ
5 called MARCO LAVAYEN requesting a copy of her insurance policy. MARCO LAVAYEN did
6 not provide one. In July 1998, RODRIGUEZ called MARCO LAVAYEN again, requesting a
7 copy of her insurance policy. MARCO LAVAYEN told RODRIGUEZ not to worry and assured
8 her that she had insurance. MARCO LAVAYEN then referred RODRIGUEZ to his wife ANA
9 LAVAYEN. RODRIGUEZ spoke to ANA LAVAYEN who told RODRIGUEZ that she had
10 insurance. Again, RODRIGUEZ waited, but did not receive a copy of her policy. MARCO
11 LAVAYEN told RODRIGUEZ that if she did not receive a copy of her policy by August 4, 1998,
12 he would refund her money. On August 4, 1998, RODRIGUEZ informed MARCO LAVAYEN
13 that she did not receive a copy of her policy and wanted her money back. MARCO LAVAYEN
14 told RODRIGUEZ to speak to the corporate office about her refund request. ANA LAVAYEN
15 called RODRIGUEZ on August 5, 1998, informing RODRIGUEZ that she could not give
16 RODRIGUEZ a refund, and told RODRIGUEZ that she should be happy that she received several
17 months of free insurance. RODRIGUEZ asked ANA LAVAYEN for the telephone number of
18 her insurance company. RODRIGUEZ called 1-800-669-1889, the number for Arrowhead
19 Insurance Company (hereafter "Arrowhead"). RODRIGUEZ was told that Arrowhead had her
20 application, but that Arrowhead had not received payment. RODRIGUEZ contacted ANA
21 LAVAYEN and requested a refund because RODRIGUEZ had obtained insurance elsewhere.
22 RODRIGUEZ called Arrowhead demanding a refund, which RODRIGUEZ received on
23 November 19, 1998. RODRIGUEZ requested a refund from ANA and MARCO LAVAYEN for
24 the \$25.00 broker fee. ANA and MARCO LAVAYEN refused to refund RODRIGUEZ.

25 31. The Department's investigators questioned ANA LAVAYEN on March 9, 1999
26 and MARCO LAVAYEN on February 2, 2000 regarding RODRIGUEZ's policy. ANA
27 LAVAYEN stated that she and MARCO LAVAYEN were the parties involved in the
28 RODRIGUEZ transaction. ANA LAVAYEN stated that MARCO LAVAYEN only collected

1 information, gave applications to, and received information from RODRIGUEZ. ANA
2 LAVAYEN stated that she issued the quote with Mercury Insurance, which was later rejected
3 because JONAS did not have a Notice of Appointment with Mercury Insurance. ANA
4 LAVAYEN stated that she “uploaded” a second application by computer for RODRIGUEZ with
5 Arrowhead on June 11, 1998. ANA LAVAYEN expected Arrowhead to withdraw premiums due
6 from J.I.S.’s trust account, but later learned that Arrowhead does not withdraw funds from trust
7 accounts. ANA LAVAYEN stated that she was notified by Arrowhead that the original
8 application was to be sent with payment, and that she did so on July 31, 1998. ANA LAVAYEN
9 stated that she did not issue a binder for insurance, but she did issue a temporary identification
10 card indicating coverage from June 11, 1998 through December 11, 1998. ANA LAVAYEN
11 stated that she could not find the brokerage agreements, the Mercury Insurance application, a
12 copy of the premium check, and the insurance identification cards because they were not in the
13 file. ANA LAVAYEN stated that although she made payment for premium to Arrowhead on
14 July 31, 1998, coverage was bound on June 11, 1998.

15 32. The California Department of Insurance found that RODRIGUEZ made a broker
16 fee payment on April 27, 1998, and premium payments on May 6, 1998 and June 12, 1998, to
17 “Lizbeka Enterprise” and/or J.I.S., but RODRIGUEZ’s application was not received by
18 Arrowhead until September 14, 1998. RODRIGUEZ stated that she signed applications, broker’s
19 agreements, received insurance identification cards, and made payments for insurance solely with
20 MARCO LAVAYEN. MARCO LAVAYEN stated that he entered the insurance quotation into
21 the computer, initialed it, and gave it to RODRIGUEZ on June 11, 1998, contradicting ANA
22 LAVAYEN’s statements to Department investigators. RODRIGUEZ received an insurance
23 identification card from and initialed by MARCO LAVAYEN. Arrowhead notified JONAS and
24 J.I.S. that it does not allow an identification card to be issued for more than thirty (30) days;
25 however, Arrowhead honored the identification card in question. ANA LAVAYEN could not
26 explain why her husband MARCO LAVAYEN gave instructions to RODRIGUEZ to make out a
27 twenty five dollar (\$25.00) check for broker’s fees payable to their import-export business.

28 33. The Department further found that MARCO LAVAYEN, while unlicensed,

1 accepted premium payments, gave insurance quotes, gave insurance identification cards, accepted
2 applications and brokerage agreements, and discussed insurance coverage with RODRIGUEZ.

3 34. It was also found that RODRIGUEZ was without coverage from April 27, 1998
4 through June 11, 1998, thereby exposing RODRIGUEZ to the risk of loss. If not for Arrowhead
5 honoring JONAS and J.I.S.'s binding authority, RODRIGUEZ would have been without coverage
6 up to September 14, 1998, the day Arrowhead was in receipt of the original application and
7 payment of premiums from JONAS and J.I.S.

8 Transacting While Unlicensed/Aiding and Abetting an Unlicensed Agent

9 35. On November 2, 1998, a Department of Insurance investigator entered J.I.S. and
10 Lizbeka Travel Agency located at 319 S. Magnolia, in Anaheim, California. MARCO
11 LAVAYEN presented the investigator with his business card that displayed his name, the name of
12 the insurance agency J.I.S., and the License No. 0773949. The license number on the business
13 card belonged to ANA LAVAYEN. MARCO LAVAYEN offered to give the investigator a
14 quote for automobile insurance. MARCO LAVAYEN also collected client information, broker's
15 fees and premiums, initialed insurance applications, gave quotes and discussed insurance
16 coverage. Both ANA AND MARCO LAVAYEN admitted that they were the parties involved in
17 the RODRIGUEZ transaction. Further, RODRIGUEZ signed insurance applications, broker
18 agreements, received insurance identification cards and made premium payments solely with
19 MARCO LAVAYEN. Accordingly, MARCO LAVAYEN transacted the business of insurance
20 by soliciting, negotiating or effecting insurance contracts without a valid license from the
21 Insurance Commissioner, in violation of California Insurance Code section 1631. Any person
22 who acts, offers to act, or assumes to act in a capacity for which a license is required without a
23 valid license so to act is guilty of a misdemeanor.³

24 36. Furthermore, ANA LAVAYEN allowed MARCO LAVAYEN to use her
25 insurance license number on his business card. She admitted that MARCO LAVAYEN
26 participated in the RODRIGUEZ transaction. She knew and allowed MARCO LAVAYEN to
27 work and transact the business of insurance at the J.I.S. and Lizbeka Travel Agency office located
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³ California Insurance Code section 1633.

1 in Anaheim, California. Her conduct shows that she aided and abetted an unlicensed person,
2 MARCO LAVAYEN, to transact the business of insurance, in violation of California Insurance
3 Code section 1668(n).

4 37. In addition, JONAS was involved in the RODRIGUEZ transaction because it took
5 place at JONAS' place of business, the premiums were made payable to JONAS' business J.I.S.,
6 the premiums were deposited in the J.I.S. trust account, JONAS and J.I.S. were in possession of
7 the records, and the insurance agent named on the policy was JONAS' d.b.a., J.I.S. Therefore,
8 JONAS and J.I.S. aided and abetted an unlicensed person, MARCO LAVAYEN, to transact the
9 business of insurance, in violation of California Insurance Code section 1668(n). Further,
10 JONAS and J.I.S. permitted a person in his employ, MARCO LAVAYEN to transact insurance
11 without a license. JONAS and J.I.S. also permitted a person in his employ, ANA LAVAYEN, to
12 aid and abet MARCO LAVAYEN to transact the business of insurance. By such conduct,
13 JONAS and J.I.S. violated California Insurance Code section 1668(o).

14 Incompetence and Untrustworthiness

15 38. JONAS and ANA LAVAYEN's client files were incomplete and they were unable
16 to provide the required client documents to Department of Insurance investigators. In his March
17 18, 1999 declaration to Department investigators, JONAS stated that "*I wrote the [Melahouris]*
18 *policy in February 1998 and gave the application to my staff to process. In late June we realized*
19 *we had a problem with Mrs. Melahouris policy because there wasn't one in the file. We*
20 *attempted to have Condor honor the claim but they said the policy had been cancelled...In this*
21 *office I bring in the business and I hand off the application to my staff to follow up. I do not know*
22 *all of the details other than after the fact...I understand that I am ultimately responsible and there*
23 *should be no excuse, I understand that. I've begun to implement a flow chart which will eliminate*
24 *the problem as well as other facets that will help me run a more effective and consistent agency.*
25 *It is my fault that I have not managed the business as well and have made corrections to prevent*
26 *errors on policies but it was not intentional... I was asked to provide checks...I said we did not*
27 *have any... I do have that journal but I cannot find it at this time... I did not know we kept copies*
28 *of (carbon copies) of our old checks on file. That is why I did not provide them..."*

39. In her March 18, 1999 declaration to Department of Insurance Investigators, ANA LAVAYEN stated that “*I don’t know where all of the check logs are, like the copy of the log sheet in this [Melahouris] file. I don’t know where the check log is because we had to make copies of it when our E&O investigator was here...*”

40. Further, JONAS stated that his records are in complete disarray, does not maintain a cash receipts journal, and did not reconcile his trust account, as stated in his declaration to Department of Insurance investigators on March 8, 1999.

41. In a letter from Farmers Insurance Group (hereafter “Farmers”) to the Department’s investigator dated December 21, 1998, the Department was informed that JONAS and Farmers terminated their relationship by mutual consent on September 6, 1996. The termination was precipitated by actions on JONAS’ part, which violated company policy. Despite severing his ties with Farmers, JONAS still used checks for his operating account bearing the name “Farmers Insurance Group” on at least one occasion on March 18, 1998.

42. With regard to the DURON account, JONAS provided proof of insurance to First American Title that Condor Insurance was the insurer. Condor Insurance, however, had no record of an application received or policy issued.

43. The above-described conduct in paragraphs 38 through 42 exposed MELAHOURIS, DURON and RODRIGUEZ to the risk of loss, and in fact, caused MELAHOURIS to incur an uninsured loss. Such conduct shows incompetency and untrustworthiness by JONAS and ANA LAVAYEN.

Fiduciary Theft of Funds

44. JONAS used trust account funds for his personal use. Checks written throughout 1997 from JONAS and J.I.S.'s trust account obtained by the Department of Insurance show that JONAS' signature appears on trust account checks used to pay rent, salaries, car payments, utilities and other assorted bills. In his March 8, 1999 declaration to Department investigators, JONAS acknowledged that he used trust account funds to pay for non-trust account obligations.

45. Further, ANA LAVAYEN's signature appears on trust account checks used to pay bonuses, salaries, messenger service, and other office expenses throughout 1997 and 1998.

46. By the above-mentioned conduct in paragraphs 44 and 45, JONAS and ANA LAVAYEN received funds in a fiduciary capacity and diverted or appropriated those trust account funds for his or her own use in violation of California Insurance Code sections 1733 and 1734.

Failure to Keep Records

47. On several occasions on or about December 1998 the Department's investigator viewed JONAS and J.I.S. records. JONAS was unable to provide client information ranging from applications, policies, broker agreements, binders, correspondence, and premium payments received with regard to the above-named complainants (MELAHOURIS, DURON and RODRIGUEZ). JONAS stated in his December 3 and December 10, 1998 declarations to Department investigators that he could not locate the Condor Insurance policy, cancelled premium checks, and insurance application for DURON. Further, ANA LAVAYEN, in her December 10, 1998 declaration to Department investigators, stated with respect to the DURON complaint that she was the person that submitted the application and payment to Condor Insurance. She could not, however, prove that an application was submitted and that payment for the premium was paid.

48. With regard to the RODRIGUEZ complaint, ANA LAVAYEN, in her March 9, 1999 declaration to Department investigators, stated that *“I completed the Mercury application for Rodriguez and left it with Marco to have her sign the application. I did have Mrs. Rodriguez sign a brokerage agreement on April 27, 1998 for the Mercury policy which was \$25. I don’t have the agreement in the file and I do not know where it is. I had Mrs. Rodriguez sign the agreement along with the Mercury application. I do not know where the Mercury application is either. The application was rejected by Superior Access who is the broker for Mercury and I don’t have a copy of the rejection in the file.”*

49. In his March 8, 1999 declaration to Department investigators, JONAS stated that *“I was not able to locate all of my bank records and I am not sure where they are. I do not have the bank statements for the trust account except for the months of February, March and June, July 1998 at present.”*

1 50. With regard to the MELAHOURIS complaint, JONAS stated in his March 18,
2 1999 declaration to Department investigators that “*we had a problem with Mrs. MELAHOURIS*
3 *[sic] policy because there wasn’t one in the file.*” Further, “*I do have that [check] journal but I*
4 *cannot find it at this time ...*” Similarly, in ANA LAVAYEN’s March 18, 1999 declaration to
5 Department investigators, she stated that there was an eighty-one dollar (\$81.00) check issued to
6 Fleet Mortgage on January 8, 1999 as a refund of the brokerage fee in the MELAHOURIS matter.
7 ANA LAVAYEN made a copy of the check and stated that J.I.S. had the check, but she could not
8 locate it. Further, she did not know where all of the check logs were.

9 51. JONAS admitted to Department investigators on March 8, 1999 that his [J.I.S.]
10 trust account was in total disarray, that he did not have all the trust account bank statements, and
11 that he did not maintain a cash receipts journal. JONAS further stated that he did not reconcile
12 his trust account in 1998, and he was unable to verify if premium payments sent to the insurers
13 were received. Without all of his trust account back statements and JONAS’ use of three styles of
14 checks with the same number sequence, reconciliation of his trust account was not possible.

15 52. As a result of the above-mentioned conduct set forth herein above in paragraphs 47
16 through 51, JONAS, J.I.S. and ANA LAVAYEN failed to maintain required records in violation
17 of California Insurance Code section 1727(b) and Title 10, California Code of Regulations
18 section 2695.3(a).

19 Transacting Insurance Without Notice of Appointment

20 53. ANA LAVAYEN did not have the authority to transact the business of insurance
21 for JONAS or J.I.S. JONAS acknowledged in his December 3, 1998 declaration to Department
22 investigators that ANA LAVAYEN was not authorized to transact insurance on behalf of JONAS
23 or J.I.S. Such authority would have been filed with the Insurance Commissioner and reflected on
24 ANA LAVAYEN’s license and/or her license information on file with the Department of
25 Insurance.

26 54. The Insurance Commissioner on July 20, 1999 issued MARCO LAVAYEN a Fire
27 and Casualty Broker-Agent license. On February 9, 2000, MARCO LAVAYEN presented to a
28 Department investigator his business card with the business name J.I.S. MARCO LAVAYEN

1 was not authorized to transact insurance on behalf of JONAS or J.I.S. Such authority would
2 have been filed with the Insurance Commissioner and reflected on MARCO LAVAYEN's license
3 and/or her license information on file with the Department of Insurance.

4 **STATUTORY ALLEGATIONS**

5 55. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
6 demonstrate that it would be against the public interest to permit Respondents to continue
7 transacting insurance in the State of California and constitute grounds for the Insurance
8 Commissioner to suspend or revoke Respondents' licensing rights pursuant to Sections 1668(b)
9 and 1738 of the California Insurance Code.

10 56. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
11 demonstrate that Respondents are not of good business reputation and constitute grounds for the
12 Insurance Commissioner to suspend or revoke Respondents' licensing rights pursuant to Sections
13 1668(d) and 1738 of the California Insurance Code.

14 57. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
15 demonstrate that Respondents are lacking in integrity and constitute grounds for the Insurance
16 Commissioner to suspend or revoke Respondents' licensing rights pursuant to Sections 1668(e)
17 and 1738 of the California Insurance Code.

18 58. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
19 demonstrate that Respondents have engaged in a fraudulent practice or act or have conducted any
20 business in a dishonest manner, and constitute grounds for the Insurance Commissioner to
21 suspend or revoke the licensing rights of Respondents pursuant to Sections 1668(i) and 1738 of
22 the California Insurance Code.

23 59. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
24 demonstrate that Respondents have shown incompetency or untrustworthiness in the conduct of
25 any business, or have by commission of a wrongful act or practice in the course of any business
26 exposed the public or those dealing with them to the danger of loss, and constitute grounds for the
27 Insurance Commissioner to suspend or revoke the licensing rights of Respondents pursuant to
28 Sections 1668(j) and 1738 of the California Insurance Code.

1 60. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
2 demonstrate that Respondents have knowingly misrepresented the terms or effect of an insurance
3 policy or contract, and constitute grounds for the Insurance Commissioner to suspend or revoke
4 the licensing rights of Respondents pursuant to Sections 1668(k) and 1738 of the California
5 Insurance Code.

6 61. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
7 demonstrate that Respondents have failed to perform a duty expressly enjoined upon them by a
8 provision of this code or have committed an act expressly forbidden by such provision (including,
9 but not limited to California Insurance Code sections 1631, 1704, 1727(b) and 1733/1734), and
10 constitute grounds for the Insurance Commissioner to suspend or revoke the licensing rights of
11 Respondents pursuant to Sections 1668(l) and 1738 of the California Insurance Code.

12 62. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
13 demonstrate that Respondents ANA LAVAYEN and JONAS d.b.a. J.I.S. have aided or abetted
14 any person in an act or omission which would constitute grounds for the suspension, revocation or
15 refusal of a license or certificate issued to the person aided or abetted, MARCO LAVAYEN, and
16 constitute grounds for the Insurance Commissioner to suspend or revoke the licensing rights of
17 Respondents ANA LAVAYEN and JONAS d.b.a. J.I.S. pursuant to Sections 1668(n) and 1738 of
18 the California Insurance Code.

19 63. The facts, as alleged in Paragraph Numbers 1 through 54 herein above,
20 demonstrate that Respondent JONAS d.b.a. J.I.S. has permitted any person in his employ to
21 violate any provision of the California Insurance Code, and constitute grounds for the Insurance
22 Commissioner to suspend or revoke the licensing rights of Respondent JONAS d.b.a. J.I.S.
23 pursuant to Sections 1668(o) and 1738 of the California Insurance Code.

24 Dated: _____.

JOHN GARAMENDI
Insurance Commissioner

25
26
27 By _____
28 DANETTE C. BROWN
Staff Counsel